

among broadcast television stations is of far more marginal significance. Furthermore, under INTV's proposal, one licensee would be limited to no more than two stations. In approximately 15 markets, where all facilities are VHF stations, no new mergers would be allowed.<sup>34</sup> Thus, even INTV's proposal falls far short of complete elimination of the rule.

Second, no new local combination would be immune from review. The Commission retains authority to and does review all applications for a new stations, assignments of license or transfers of control, and facilities modification. Petitions to deny or objections lie against such applications, and nothing would preclude the Commission from reviewing the impact of grant of the application on competition and diversity in the market in question. Indeed, in comparative cases, a licensee of a station already operating in the market would suffer a comparatively fatal diversification demerit.

Third, a minimum voice test would eviscerate any relaxation of the rule. As the Commission noted, in only 38 of the top 50 markets would a six voice test permit a merger. Moreover, INTV finds only 48 markets (ADIs) in which more than six stations are operating among all markets.<sup>35</sup> In some of these markets, satellite station authorizations already have reduced the number of voices below six. Therefore, such a limitation on a relaxed duopoly rule would relegate most markets to the *status quo* and neutralize much of the benefit intended by the Commission.

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<sup>34</sup>INTV Comments, Exhibit 1.

<sup>35</sup>*Id.*

Fourth, such a voice test would spur a veritable land rush in those markets where new combinations were possible. Rarely would more than one or two combinations be possible before the voice test limit was reached. Preclusive or protective combinations might be formed primarily just to assure a licensee's competitive position *vis-a-vis* other stations in the market, rather than to take advantage of the efficiencies of combined operations.

Fifth, a voice test would foster greater disparity in competitive positions. The first combination through the door would assume a competitive advantage which never could be matched by any other licensees in the market because the voice test no longer could be satisfied. Therefore, the voice test proposed by the Commission should be abandoned. While well-intended, it quickly would prove severely delimiting and unworkable.

INTV is not calling for review with a presumption of total repeal in three years with respect to the duopoly rule. All that would remain prohibited would be VHF-VHF Grade A overlap combinations. As long as VHF facilities remain dominant in terms of audience and revenue, no need exists to permit VHF-VHF combinations. Furthermore, the concentration of such power in a local market would pose a threat to competition. Therefore, while the Commission should remain vigilant to change, it should leave the direction of its future actions concerning the duopoly rule unhindered by presumptions.

Finally, the Commission should clarify now that neither the use of channel compression to permit transmission of multiple programs on a single broadcast television channel or the simultaneous use of two 6MHz

channels during the phase-in of HDTV should alter application of a revised duopoly rule. The rule should continue to apply to stations licensed to use a 6 MHz television channel, regardless of the number of programs offered simultaneously on that channel. In other words, a station providing two programs simultaneously on a single 6MHz channel should be permitted to acquire one other station, also regardless of the number of simultaneous program offerings transmitted by the acquired station within its 6 MHz signal. Similarly, a station electing to apply for and operate a "companion" HDTV channel under the Commission's HDTV implementation procedures should be permitted to acquire another local station which also may be operating an NTSC and an HDTV channel. In neither case should the stations be considered to be already operating two stations and, thus, prohibited from further acquisitions by the relaxed duopoly rule. The Commission must not discourage stations from using innovative technologies to enhance their service to the public by applying rules to them in an arbitrary, punitive fashion. Channel compression and HDTV offer the most significant improvements in television technology since color television (and, perhaps, the remote control!) Therefore, the Commission should state at the outset that a relaxed duopoly rule would still be applied on a station by station basis without regard for a station's implementation of channel compression or HDTV service.

INTV has proposed a significant, but modest relaxation of the duopoly rule, which involves no voice test, but does permit a single licensee to own two stations in a market, provided one of them is a UHF station. Additionally, INTV has urged prohibiting overlap only with respect to stations' Grade A rather than Grade B contours. INTV's proposal will

permit licensees to take advantage of the most significant and beneficial efficiencies and economies, while maintaining diverse and competitive service to the public.

### **3. Relaxation of the One-to-a-Market Rule**

INTV favors repeal of the one-to-a-market rule. However, on an interim basis, the Commission may wish to include a *proviso* that no licensee have maximum interests in both radio and television.

No doubt exists that the one-to-a-market rule generally has outlived its usefulness. The Commission has concluded already that: "[T]here are efficiencies and related cost savings inherent in owning radio and television stations in the same market."<sup>36</sup> Furthermore, the Commission has recognized that the public benefits from more and better programming from commonly-owned radio and television stations:

We remain convinced by the record in this proceeding that economic incentives induce the owners of two or more stations in the same market to offer varied programming of the type that our rules were designed to encourage. It is in the best interest of broadcasters to provide high quality programming because this leads to greater audience shares and higher returns.<sup>37</sup>

Similarly, more stations may be viable in both services. In radio, AM is in a perilous situation; UHF television struggles in a cable world. Both services could benefit from common ownership with a financially secure,

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<sup>36</sup>*Second Report and Order*, MM Docket No. 87-7, 4 FCC Rcd 1741, 1747 (1989) [hereinafter cited as *SRO*].

<sup>37</sup>*Id.*, 4 FCC Rcd at 1749.

well-managed licensee of a VHF or FM station. Indeed, in some small communities, services considered too risky might be placed on the air, thereby increasing program diversity

Additionally, the administrative burden of case-by-case handling of waiver cases also would be eliminated if the rule were eliminated.

What also is now highly ironic is the fact that a single cable operator can control over 30 channels of television service to a majority of viewers in a community, while a competing television station cannot even own a radio station in the same community, absent a waiver of the Commission's rules. This is true in small as well as large markets. On the other hand, the efficiencies and benefits of radio-television cross-ownership are no less significant in small rather than large markets.

Whereas the Commission has been cautious in this area, common ownership of radio and television stations in the same market hardly is a recent phenomenon. Many such combinations have operated via grandfathered status for years in markets large and small. New combinations have come into existence under the Commission's recent liberalization of its rule and waiver standard. In short, the Commission *does* have a base of experience from which to derive evidence and draw conclusions.

The Commission even in the absence of a direct prohibition still would lose no ability to supervise the creation of radio-television combinations. First, every acquisition of a station is subject to approval by the Commission. All such applications are subject to objection or petition to

deny. Second, the Commission still will entertain complaints of abusive practices. Experience suggests, however, that such complaints will be few.

Therefore, the Commission ought be looking toward complete elimination of the one-to-a-market rule, perhaps, with an interim rule fashioned after INTV's alternative proposal.

**D. LOCAL MARKETING AGREEMENTS SHOULD BE GOVERNED JUST AS ATTRIBUTABLE OWNERSHIP INTERESTS ONLY IF THE TELEVISION LOCAL OWNERSHIP RULES ARE RELAXED SUBSTANTIALLY.**

INTV generally would concur with the Commission that time brokerage and local marketing agreements (LMAs) should be governed by the same standards as attributable ownership interests if -- and only if -- the Commission determines to "substantially relax the television local ownership rules."<sup>38</sup> If, on the other hand, the Commission hesitates to allow common ownership of two stations in the same market, then the door should not be slammed on LMAs involving nominally competitive stations. First, television LMAs hardly are pervasive, as the Commission already has determined. Second, they are highly beneficial in that they may allow a licensee to maintain station operation via the resuscitative powers of an LMA with a neighboring station. They permit the financial resources and expertise of an established licensee to prop up operation of a station which in all likelihood would go dark absent the LMA. They also may permit a single UHF licensee to distribute programming via a second facility which

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<sup>38</sup>NPRM at ¶21.

covers portions of a market not served by the licensee's primary facility. Again, this enables the licensee to be a competitive, responsive service in the market, rather than relegating two struggling UHF stations to oblivion.

INTV suggests strongly that if the Commission is disinclined to embrace meaningful relaxation of the duopoly rule and remains reticent to permit LMAs which contravene the duopoly limitations, then it should assess carefully the effect of its decision on existing LMAs before acting. To the extent that LMAs are preserving the viability of operating stations, imposing a more restrictive regime could reduce service to the public. Even if only a handful of LMAs are involved, the stations involved may have been plucked from the endangered species list by the LMA. Their demise would vindicate abstract public policy at the expense of the genuine public interest.<sup>39</sup>

Therefore, INTV posits parallel LMA and duopoly restrictions only if the duopoly rule is relaxed in the manner proposed by INTV.

#### **E. ELIMINATION OF THE DUAL NETWORK RULE SHOULD NOT FACILITATE SIDE-STEPPING OTHER PROHIBITIONS.**

INTV does not oppose repeal of the dual network rule, provided safeguards remain in place to prevent circumvention of the network financial interest and syndications rules and the prime time access rule. Currently, for example, the definition of a network in §73.662(i) would

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<sup>39</sup>Permitting LMAs out-of-synch with the duopoly rule would enable the Commission to gain a better appreciation of some of the costs and benefits of common operation of two local facilities.

prevent a network from evading the definition of a network by splitting its prime time schedule between two nominally separate networks. The definition now is broad enough to encompass all "network" feeds under common control. Consequently, dual networks in which the same persons or entities held attributable interests would be considered a single network for purposes of applying the 15-hour threshold pertinent to the network definition in the financial interest and syndication rules and the prime time access rule. This simple safeguard remains an essential element of any decision to repeal the dual network rule.

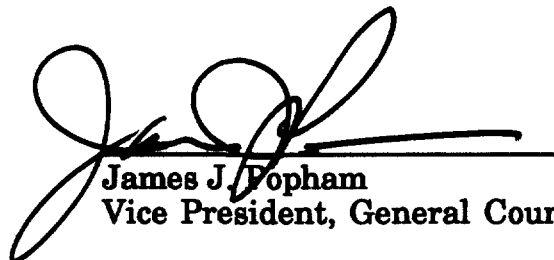


## **F. CONCLUSION**

INTV has offered a proposal for significant, but measured relaxation of the Commission's television ownership rules. This will permit the Commission to move incrementally to complete repeal of all the television ownership rules except, perhaps, for a slimmed-down duopoly rule. Changes in the video marketplace assure that significant relaxation of the television ownership rules will result in better broadcast service to the public and is more likely to enhance rather than diminish competition and the diversity of programming.

Therefore, INTV urges the Commission to adopt INTV's proposals for relaxation of the its television ownership rules.

Respectfully submitted,



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